

JPA File No.: JPA 04-104
AG Contract No.: KR04-1625TRN
Project No.: TEA 085-A(004)A
Section: SR 85, Ajo from Sahuaro to
Rasmussen
TRACS: H6603 01C
Budget Source Item No.: 75306
County Contract No.: 01-04-A-136991-0905

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
PIMA COUNTY

THIS AGREEMENT is entered into this date October 26 2005, pursuant to Arizona Revised Statutes (A.R.S.) Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and PIMA COUNTY, acting by and through its BOARD OF SUPERVISORS, (the "County").

I. RECITALS

1. The State is empowered by A.R.S. § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by A.R.S. § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. Congress has authorized appropriations for twelve eligible transportation enhancement provisions.

4. The State will construct Americans Disabilities Act (ADA) compliant 5 foot sidewalks and landscaping using indigenous foliage and shade trees and compliant pedestrian shaded seating areas along State Route (SR) 85 in Ajo, Arizona, from Saguaro Street to Rasmussen Road, hereinafter referred to as the "Project", using State and Federal funding. The County will be responsible for maintenance and repair of the sidewalks, at County's sole expense, once construction of the Project has been completed. The purpose of this Agreement is to provide for the County's ongoing maintenance of pedestrian improvements constructed by ADOT in State right of way and to address the parties' responsibilities regarding the Project.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27808
Filed with the Secretary of State
Date Filed: 10-26-08
Janice K. Brewer
Secretary of State
By: [Signature]

The estimated costs are as follows:

Construction Tracs No: H6603 01C	
Estimated Federal-aid funds @ 94.3%:	\$486,000.00
Estimated State funds @ 5.7 %	<u>\$ 34,000.00</u>
Total Estimated Cost of the Project	\$522,000.00

II. SCOPE OF WORK:

1. The State shall:

- a. Prepare plans, specifications and an estimate for the Project and submit them to the County for comments as appropriate.
- b. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.
- c. Construct the Project approved by FHWA if funds are available for the Project.
- d. Act as the designated authorized agent to advertise for, receive and open bids for the Project.
- e. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA.
- f. Enter into a Project Agreement with FHWA on behalf of the County to perform, complete, accept and pay for the Project in accordance with instructions and requirements of the County and the Arizona Department of Transportation (ADOT).
- g. Request the maximum Federal Funds available to cover construction, engineering and administration costs for the Project.
- h. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributable to the State.
- i. Not be obligated to maintain the sidewalks and landscaping should the County fail to budget or provide for proper and ongoing maintenance of the Project improvements as set forth in this Agreement.

2. The County shall:

- a. Review the design documents required for construction of the Project and provide comments to the State as appropriate.
- b. Upon satisfactory completion of construction, approve and accept the Project improvements into the County's maintenance program.
 - Maintenance of sidewalks will consist of keeping the surface and surrounding areas free of all debris, undesirable weeds, grasses, trash and litter. The sidewalk surfaces will be repaired and replaced as necessary to correct trip hazards and any erosion around the sidewalk and will be maintained to the final grade at the completion of the Project.
 - Maintenance of landscaping shall consist of maintaining the landscaping as it was designed and established at the completion of the Project; the care of all landscaping in accordance with accepted horticultural practices; keeping all areas free of weeds, undesirable grasses litter supplying irrigation water and electrical power necessary to operate the irrigation system, if applicable.

c. Be responsible for the cost increase of any change in the extent or scope of the work called for by the County and approved by the State.

d. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributable solely to the County.

e. Conduct all maintenance work in a manner intended to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

III. MISCELLANEOUS PROVISIONS

1. The terms conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance provided by the County shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the County cancels this Agreement, the State shall in no way be obligated to maintain the Project.

2. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnatee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnatee, are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with A.R.S. § 38-511.

5. In the event of any controversy arising out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. § 12-1518.

6. The provisions of A.R.S. § 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX (602) 712-7424

Pima County
Attn: Glen Dickens, Intergovernmental Relations
Manager
Pima County Dept of Transportation
201 N. Stone Avenue, 3rd Floor
Tucson, Arizona 85701-1207

11. Pursuant to A.R.S. § 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

PIMA COUNTY STATE OF ARIZONA

DEPARTMENT OF TRANSPORTATION

By 
SHARON BRONSON
Chair of the Board **SEP 13 2005**

By 
for SUSAN TELLEZ
Contract Administrator

ATTEST:

By 
LORI GODOSHIAN
Clerk of the Board

DETERMINATION OF APPROVAL

Pursuant to A.R.S. Section 11-925, the Attorneys for the parties have determined that this Agreement is in proper form and is within the powers and authorities granted under Arizona law to the parties to this Agreement.

I hereby state that I have reviewed the proposed Intergovernmental Agreement between the PIMA COUNTY and the STATE OF ARIZONA: ARIZONA DEPARTMENT OF TRANSPORTATION and declare the Agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

STATE OF ARIZONA: DEPT OF TRANSPORTATION

PIMA COUNTY

By _____
Assistant Attorney General

By 
Deputy County Attorney

Date: _____

Date: 8/24/05

RESOLUTION NO. 2005- 237

RESOLUTION OF PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT), WHICH PROVIDES FOR THE CONSTRUCTION AND MAINTENANCE OF ADA COMPLIANT PEDESTRIAN SIDEWALKS ALONG STATE ROUTE 85 IN AJO, ARIZONA.

(DISTRICT 3)

WHEREAS, ADOT intends to construct Americans Disabilities Act (ADA) compliant sidewalks along State Route 85 between Saguaro Street and Rasmussen Road in Ajo, Arizona, using State and Federal funds, and

WHEREAS, ADOT has requested that Pima County maintain and repair as needed the ADA compliant sidewalks in Ajo once construction has been completed by ADOT, and

WHEREAS, Ajo, Arizona, is a non-incorporated town and lies fully within the jurisdictional boundaries of Pima County, and

WHEREAS, Pima County is willing to maintain and repair as needed the ADA compliant sidewalks in Ajo upon completion of construction by ADOT, and

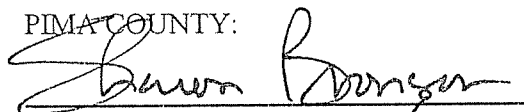
WHEREAS, Pima County and ADOT wish to enter into an intergovernmental agreement for the purpose of establishing the responsibilities of the parties with regard to the ADA complaint sidewalks constructed in Ajo, Arizona, by ADOT,

NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:

1. Pima County shall enter into an intergovernmental agreement (JPA 04-104) with ADOT for the purpose of accepting into the County's maintenance system those ADA complaint sidewalks constructed by ADOT in the Town of Ajo, Arizona.
2. The Chair of this Board is hereby authorized and directed to sign the foregoing intergovernmental agreement.
3. The various Pima County officers and employees are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

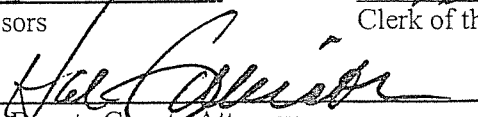
PASSED, ADOPTED AND APPROVED this 13th day of September, 2005.

PIMA COUNTY:


Chair, Board of Supervisors

SEP 13 2005

Approved as to form:


Deputy County Attorney

ATTEST:


Clerk of the Board



TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line: 602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

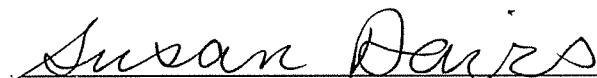
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1625TRN (**JPA 04-104**), an Agreement between public agencies, i.e., The State of Arizona and Pima County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: October 19, 2005

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:930441
Attachment